



U.S. Department of Justice

United States Attorney
Southern District of New York

United States District Courthouse
300 Quarropas Street
White Plains, New York 10601

December 13, 2018

BY EMAIL

Kevin T. Conway, Esq.
664 Chestnut Ridge Rd.
Spring Valley, NY 10977
kconway@ktclaw.com

Re: *United States v. Hector May*, 18 Cr. ____

Dear Mr. Conway:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Hector May ("the defendant") to the above-referenced two-count Information. Count One charges him with conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349 and carries a maximum term of imprisonment of twenty years, a maximum term of supervised release of three years, a maximum fine, pursuant to 18 U.S.C. § 3571, of the greater of \$250,000 or twice the gross gain derived from the offense or twice the gross loss to the victim, and a mandatory \$100 special assessment. Count Two charges him with investment adviser fraud, in violation of 15 U.S.C. §§ 80b-6 and 80b-17 and carries a maximum term of imprisonment of five years, a maximum term of supervised release of three years, a maximum fine of \$10,000, and a mandatory \$100 special assessment. In addition to the foregoing, the Court must order forfeiture and restitution as specified below.

In consideration of the defendant's plea to the above offenses, and subject to an allocution acceptable to the Government, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations, if any, as to which this Office cannot, and does not, make any agreement) for the conduct described in Count One, it being understood that this agreement does not bar the use of such conduct as predicate acts or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegation with respect to Count One of the Information and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c): (i) a sum of money equal to \$11,452,185 in United States currency, representing the amount of proceeds traceable to the

commission of said offense (the "Money Judgment") and (ii) all right, title and interest of the defendant in the following specific property:

- a) Any and all funds in account number 015062762365 held in the name of ECP, Inc. located at JPMorgan Chase Bank, N.A.;
- b) Any and all funds in account number 0310064762765 held in the name of ECP, Inc. located at JPMorgan Chase Bank, N.A.;
- c) Any and all funds in account number 6809196613 held in the name of Sonia May located at JPMorgan Chase Bank, N.A.;
- d) Any and all funds in account number 93631142670 held in the name of Sonia May located at JPMorgan Chase Bank, N.A.;
- e) Any and all funds in account number 986666 held in the name of Executive Compensation Planners, Inc. located at Citibank Bank, NA;
- f) Any and all funds in account number 16072324 held in the name of Hector May located at Sterling Bank;
- g) Any and all funds in account number 7800002292 held in the name of Hector May located at Sterling Bank;
- h) Any and all funds in account number 324532011941 in the name of Hector May and Sonia May at KeyBank that exceed the sum of \$38,666.
- i) Any and all funds held in accounts in the name of Hector May or Sonia May, located at Securities America Inc., including without limitation accounts AEW-181480, 81802257301AKO, 81802257302AKO, RCT395730, STL158178, and any deferred compensation plans;
- j) Any and all funds in account number 7800124019 held in the name of Sonia May located at Sterling Bank;
- k) Any and all funds held in accounts in the name of Sonia May and Hector May located at Franklin Templeton Investor Services, LLC, including without limitation account 60160765368106011;
- l) One Cartier 18KT Bracelet with diamonds;
- m) One hand made 14KT yellow gold tennis bracelet;

- n) One pair diamond earrings;
- o) One 14KT white gold diamond tennis bracelet;
- p) One pair Japanese cultured pearl and diamond earrings;
- q) One 18KT white gold diamond neckless;
- r) One pair 14KT white gold diamond earrings;
- s) One 14KT white gold diamond stick pin;
- t) One men's Rolex oyster perpetual datejust watch;
- u) One ladies Rolex oyster perpetual datejust watch;
- v) One pair of diamond and pearl earrings;
- w) One natural Blackglama female mink jacket 28" long;
- x) One blush full fox skin jacket;
- y) One blush dyed fox full skin headband;
- z) One natural silver tip raccoon coat;
- aa) One natural Blackglama female mink jacket 51" long;
- bb) One natural Russian lynx vest;
- cc) One natural female mink coat with notch collar rollup cuffs;
- dd) One silver cutlery set for twelve located at the defendants residence in Orangeburg, NY;
- ee) One antique Grandfather clock located at the defendants residence in Orangeburg, NY;

(collectively, the “Specific Property”). The defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Specific Property and will not cause or assist anyone else in doing so. The defendant also agrees to take all necessary steps to pass clear title to the Specific Property to the United States, including, but not limited to, the execution of all necessary documentation. It is further understood that any forfeiture of the defendant’s assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture. The defendant consents to the entry of the Consent Order of Forfeiture annexed hereto as Exhibit A and agrees that the Consent Order of Forfeiture shall be final as to the defendant at the time it is ordered by the Court.

The defendant further agrees to make restitution in the amount of \$8,041,233 in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The applicable Guidelines manual is the November 1, 2016 manual.
2. Pursuant to U.S.S.G. § 3D1.2(a), Counts One and Two constitute one group.
3. The base offense level for Count One is 7, pursuant to U.S.S.G. § 2B1.1(a)(1).
4. Because the loss amount is more than \$9,500,000 but less than \$25,000,000, a 20-level increase is warranted pursuant to U.S.S.G. § 2B1.1(b)(1)(K).
5. Because the offense resulted in substantial financial hardship to five or more victims, a 4-level increase is warranted pursuant to U.S.S.G. § 2B1.1(b)(2)(B).
6. Because the offense involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, a 2-level increase is warranted pursuant to U.S.S.G. § 2B1.1(b)(10)(C).
7. Because the offense involved a violation of securities law and the defendant was associated with an investment adviser, a 4-level increase is warranted pursuant to U.S.S.G. § 2B1.1(b)(19)(A)(iii).
8. Because the defendant abused a position of private trust and used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, a 2-level increase is warranted pursuant to U.S.S.G. § 3B1.3.
9. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through her allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to

U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, the Government will move at sentencing for an additional one-level reduction, pursuant to U.S.S.G. 3E1.1(a), because the defendant gave timely notice of her intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 36.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history points.

In accordance with the above, the defendant's Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is 188 to 235 months' imprisonment (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 36, the applicable fine range is \$40,000 to \$400,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party in any way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the

Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 188 to 235 months' imprisonment; and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any fine that is less than or equal to \$400,000, and the Government agrees not to appeal any fine that is greater than or equal to \$40,000. The defendant also agrees not to appeal any restitution amount that is less than or equal to \$8,041,233, and the Government agrees not to appeal any restitution amount that is greater than or equal to \$8,041,233. The defendant also agrees not to appeal any forfeiture amount that is less than or equal to \$11,452,185, and the Government agrees not to appeal any forfeiture amount that is greater than or equal to \$11,452,185. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal,

collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

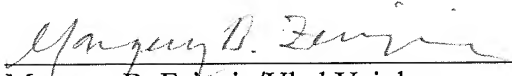
It is further agreed that should the conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.


Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

GEOFFREY S. BERMAN
United States Attorney

By: 
Margery B. Feinzig/Vlad Vainberg
Assistant United States Attorneys
(914) 993-1903/1932

APPROVED:


PERRY A. CARBONE
Chief, White Plains Division

AGREED AND CONSENTED TO:

HECTOR MAY

DATE

APPROVED:

KEVIN T. CONWAY, ESQ.
Attorney for HECTOR MAY

DATE